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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 354

FRANCISCO TORRES RAMOS,
PETITIONER,

v.

S.S. DETROIT, BEAUREGARD, INC.
and SEA LAND SERVICES, INC.,
RESPONDENTS.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Constitutional and Statutory Provisions Involved

1. Constitution, art. IV, § 3, cl. 2—

> "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; . . ."

2. Second Organic Act of 1917, § 7 (Puerto Rican Federal Relations Act, 48 U.S.C. § 747)—

Public property transferred

All property which may have been acquired in Puerto Rico by the United States under the cession of Spain in the treaty of peace entered into on the 10th day of December, 1898, in any public bridges, road houses, water powers, highways, unnavigable streams and the beds thereof, subterranean waters, mines or minerals under the surface of private lands, all property which at the time of the cession belonged, under the laws of Spain then in force, to the various harbor works boards of Puerto Rico, all the harbor shores, docks, slips, reclaimed lands, and all public lands and buildings not reserved by the United States for public purposes prior to March 2, 1917, is placed under the control of the government of Puerto Rico, to be administered for the benefit of the people of Puerto Rico; and the Legislature of Puerto Rico shall have authority, subject to the limitations imposed upon all its acts, to legislate with respect to all such matters as it may deem advisable. Mar. 2, 1917, c. 145, § 7, 39 Stat. 954; May 17, 1932, c. 190, 47 Stat. 158.

3. Second Organic Act of 1917 § 8 (Puerto Rican Federal Relations Act, 48 U.S.C. § 749)—

"*Harbors and navigable waters transferred.*

The harbor areas and navigable streams and bodies of water and submerged lands underlying the same in and around the island of Puerto Rico and the adjacent islands and waters, owned by the United States on March 2, 1917, and not reserved by the United States for public purposes, are placed under the control of the government of Puerto Rico, to be administered in the same manner and subject to the same

limitations as the property enumerated in sections 747 and 748 of this title. All laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, except so far as the same may be locally inapplicable, shall apply to said islands and waters and to its adjacent islands and waters. Nothing contained in this chapter shall be construed so as to affect or impair in any manner the terms or conditions of any authorizations, permits, or other powers lawfully granted or exercised in or in respect of said waters and submerged lands in and surrounding said island and its adjacent islands by the Secretary of the Army or other authorized officer or agent of the United States prior to March 2, 1917. Mar. 2, 1917, c. 145, § 8, 38 Stat. 954; May 17, 1932, c. 190 47 Stat. 158; July 26, 1947, c. 343, Title II, § 205 (a), 61 Stat. 501."

4. Second Organic Act of 1917, § 37 (Puerto Rican Federal Relations Act, 48 U.S.C. § 821)—

"*Legislative power*

The legislative authority shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize the municipalities so far as may be necessary, to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal any or all laws and ordinances of every character in force in Puerto Rico or municipality or district thereof on March 2, 1917, insofar as such alteration, amendment, modification, or repeal may be consistent with the provisions of this chapter. Mar. 2, 1917, c. 145, § 37, 19 Stat. 964; May 17, 1932, c. 190, 47 Stat. 158."

5. Law No. 45 of 1935, Laws of Puerto Rico, p. 259, § 20, 11 L.P.R.A. §.21:

> "When an employer insures his workmen or employees in accordance with this chapter, the right herein established to obtain compensation shall be the only remedy against the employer; but in case of accident to, or disease or death of, the workmen or employees not entitled to compensation under this chapter, the liability of the employer is, and shall continue to be, the same as if this chapter did not exist."

6. Civil Code of Puerto Rico, 31 L.P.R.A. Sect. 5141-

> "*Obligation when damage caused by fault or negligence*
>
> A person who by an act or omission causes damage to another through fault or negligence shall be obliged to repair the damage so done. Concurrent imprudence of the party aggrieved does not exempt from liability, but entails a reduction of the indemnity.—Civil Code, 1930, § 1802; June 9, 1956, No. 28, p. 86, eff. June 9, 1956."

Statement of the Case

The statement of the case appearing on pages 6-7 of the Petition is substantially correct but we should add the following in order that the issues involved may be absolutely clear from both a factual and a legal standpoint.

On the date of the accident, the SS DETROIT was operated, manned and managed, and was in full possession and complete control of the co-defendant Sea-Land Service, Inc. as demisee of the vessel and owner thereof *pro hac vice*. The unloading operations were being performed by

the demisee and owner *pro hac vice* itself, had no relation to any defect of the vessel or its appurtenances, and therefore, had no connection whatever with the owner-demisor of the vessel. At the time of the occurrence co-defendant Sea-Land Service, Inc. had insured its employees under the Puerto Rico Workmen's Compensation Act and petitioner Francisco Torres Ramos applied for and was awarded compensation under said Act for the injuries sustained by him.

The Petitioner conceded that, in the foregoing situation, no liability can be imposed on the demisee and owner *pro hac vice* in view of the exclusive remedy provided in the Workmen's Compensation Law of Puerto Rico, but Petitioner claims that the Owner-Demisor should be held liable because of the alleged incidental unseaworthiness of the vessel, even though the same arose after the demise and in the circumstances hereinabove described.

The Petitioner also contends that the vessel on which the accident occurred can be sued *in rem* and made responsible for the alleged unseaworthiness although no personal liability of the owner exists.

Reason for Denying the Writ

1. The decision of the Court of Appeals for the First Circuit is not in conflict with decisons of this Court.

2. The decision of the Court of Appeals for the First Circuit is not in conflict with decisions of other Courts of Appeals, except the Second Circuit; and the present case is not the proper one for the solution of the conflict by this Court.

3. The decision of the Court of Appeals for the First Circuit is not in conflict with provisions of the Constitution of the United States.

4. In the absence of a Constitutional Mandate for uniformity in Puerto Rico, Congress, acting under its constitutional power to legislate for national territories, could have extended the admiralty provision of the Constitution to Puerto Rico, but has instead enabled Puerto Rico to enact its own legislation for local maritime workers.

5. There lying no Constitutional or Congressional Mandate for uniformity, there is to be considered the construction of the local Compensation Act of Puerto Rico, an area wherein this Court traditionally defers to the local Courts.

6. The tort provisions of the Civil Code of Puerto Rico create no liability unless there is fault or negligence of the party sought to be made responsible and no remedy *in rem* exists in connection with the enforcement of the liability that may arise under said provisions.

Argument

We shall now proceed to argue, in the same order above set forth, the reasons for which we maintain that the Writ of Certiorari should be denied.

1. The Decision of the Court of Appeals for the First Circuit is Not in Conflict With the Decisions of This Court.

In trying to support his contention that the decision of the Court of Appeals holding that a vessel is not liable *in rem* when a shipowner, either actual or *pro hac vice*, is exonerated from liability, is directly in conflict with decisions of this Court, the Petitioner cites a number of

cases which we shall examine and discuss briefly to show that they are not applicable to the situation of fact and law involved herein.

The Palmyra, 25 U.S. (12 Wheat) 1, 6 L. ed. 531, was a special proceeding under the specific act of Congress of March 3, 1819, regulating the condemnation and distribution of proceeds in cases involving piracy. It was held that in indictment and conviction *in personam* were not necessary because of the statutorily created proceeding *in rem* under the specific Act of Congress. In the present case there is no such special statutory proceeding involved.

The *Malek Adhel*, 43 U.S. (2 How.) 212, 11 L. ed. 239, was also a piracy case under the same special Act of Congress. The vessel was assumed to have committed the aggression since the Law specifically provided that the vessel should be condemned and, furthermore, it was held that the owner was bound by the acts or omissions of the Master. It is interesting to note that this Court exonerated the cargo, stating that it could not be included, even if it belonged to the owner of the vessel, when he did not participate in, or authorize, the offensive aggression. This makes it clear that the vessel was subjected to *in rem* liability without personal responsibility of the owner, because the specific provision of the special act of Congress required its condemnation.

In *The China*, 74 U.S. (7 Wall.) 53, 19 L. ed. 67, the vessel was found liable *in rem* mainly for the reason that the Master, who was held to be the owner's agent, was always responsible for the operation of the vessel even though an independent pilot was required by state law or regulation and the collision occurred due to the pilot's negligence. In other words, the Master was found responsible for not having prevented the negligent acts of the Pilot, and the owner was held responsible as a principal for the omission of his agent, the Master.

In *The Barnstable*, 181 U.S. 464, 45 L. ed. 954, there was no controversy as to the availability of the *in rem* action against the vessel, absent the personal liability of the owner. Therein it was recognized by both the charterer and the owner that the vessel was at fault, and then the controversy was between them, as to who should answer under the terms of the charter party. This Court decided that the charterer was liable although the owner had agreed to pay "for the insurance of the vessel".

Concerning *Crumady* v. *The Joachim Hendrick Fisser*, 358 U.S. 423, 3 L. ed. 2d 414, the question involved herein was not at all present in that case. There the vessel was sued *in rem* for damages sustained by a longshoreman on account of a defect in the ship's tackle which was held to constitute unseaworthiness. The vessel claimed recovery from the stevedoring contractor and the Court upheld such recovery-power. We cannot find in Crumady any implication that the vessel would have been held liable *in rem* for a claim based on unseaworthiness independently of any personal liability on the part of its owner.

In regard to *Reed* v. *Steamship Yaka*, 373 U.S. 410, 10 L. ed. 2d 448, we find that this Court decided that the exclusive remedy provision of the longshoremen's and Harbor Workers Compensation Act did not prevent recovery by an insured longshoreman against his stevedore employer who in his capacity as a bare-boat charterer breached his guaranty of seaworthiness in regard to the longshoreman. This Court expressly stated that it found "unnecessary to decide whether a ship may ever be held liable for unseaworthiness where no personal liability could be held liable for unseaworthiness where no personal liability could be asserted. . . ." Needless to say that in *Reed* v. *The Yaka* there was not involved the Puerto Rico Workmen's Accident Compensation Act which is one of

the principal determinative factors in the decision of the Court of Appeals for the First Circuit.

Thus the cases cited by the Petitioner fall very short of establishing the principle that in general admiralty law a vessel can be made liable *in rem* for unseaworthiness when there is no personal responsibility of its owner, *actual* or *pro hac vice*.

On the other hand, this Court has long held that where an *in personam* immunity or bar exists, there can be no *in rem* liability, as will be seen from the following cases:

In *Place* v. *Norwich and N.Y. Transportation Co.*, 118 U.S. 468 (1886) 30 L. ed. 134, this Court stated (p. 503):

> "To say that an owner is not liable, but that his vessel is liable, seems to us like talking in riddles. A man's liability for a demand against him is measured by the amount of property that may be taken from him to satisfy that demand. In the matter of liability, a man and his property cannot be separated. * * *"
>
> "* * * but the liability of the thing is so exactly the owner's liability, that a discharge or pardon extended to him will operate as a release of his property."

In 1901, in *The Queen of the Pacific*, 180 U.S. 49, 46 L. ed. 419, this Court held that a stipulation in a bill of lading requiring that all claims against the shipowner be brought within a certain time, was also a bar against an action in rem against the vessel after said time had expired.

In *Consumers Import Co.* v. *Kabushiki K. K. Zosenjo*, 320 U.S. 249 (1943) 88 L. ed. 30, this Court granted certiorari expressly limited to the question (p. 251) "Does the Fire Statute extinguish maritime liens for cargo dam-

age, or is its operation confined to *in personam* liability only?" in order to resolve a conflict between Circuits.

Following the language in *Place* v. *Norwich*, this Court referred again to the riddle of exonerating the shipowner while holding his property liable, saying (p. 253):

> "The riddle after more than half a century repeated to us in different contexts does not appear to us to have improved with age."

(pp. 253-254)

> "Congress has said that the owner shall not 'answer for' this loss in question. Claimant says this means in effect that he 'shall answer only with his ship. But the owner would never answer for a loss except with his property, since execution against the body was not at any time in legislative contemplation. There could be no practical exoneration of the owner that did not at the same time exempt his property. If the owner by statute is told that he need not 'make good' to the shipper, how may we say that he shall give up his ship for that very purpose? It seems to use that Congress has, with the exception stated in the Act, extinguished fire claims as an incident of contracts of carriage, and that no fiction as to separate personality of the ship may revive them."

The above language from the *City of Norwich* and *Consuelo* cases was quoted in *Continental Grain Co.* v. *Barge FBL-585*, 364 U.S. 19, 24 (1960) wherein this Court subscribed (p. 24) to "the common-sense approach" of these decisions, thus maintaining a consistent line of authority during a period of 74 years.

Therefore, the decision of the Court of Appeals in hold-

ing that a vessel cannot be sued *in rem* to make it responsible for unseaworthiness when there is no personal liability of the owner, is not in conflict, but in accord with the decisions of this Court.

2. The Decision of the Court of Appeals for the First Circuit is Not in Conflict With Decisions of Other Courts of Appeals, Except the Second Circuit, and the Present Case is Not the Proper One for the Solution of the Conflict by This Court.

In support of hs contention that the decision of the Court of Appeals herein is in conflict with decisions of other Circuits, the Petitioner cites a number of cases which, aside from *Grillea* v. *United States*, 232 F.2d 919 (2 Cir. 1956), are not in point. We shall briefly discuss these cases and later on revert to *Grillea*.

Lusich v. *Bloomfield Steamship Company*, 355 F.2d 770 (5 Cir. 1966), was a maritime tort action by an employee of a ship repair contractor against the shipowner for personal injuries. The shipowner filed a third party complaint against the contractor. There was no issue of *in rem* liabilty of the vessel absent personal responsibility of the owner.

Grigsby v. *Coastal Marine Service of Texas, Inc.*, 412 F.2d 1011 (5 Cir. 1969) involved an action of a widow for herself and children because of death of husband while seeking to effect a rescue aboard a seagoing barge. The owner of the barge was joined as a defendant, but there was no issue of liability of the barge *in rem*, absent personal responsibility of the owner.

In *Jackson* v. *Lykes Bros. Steamship Company*, 386 U.S. 731, 18 L. ed. 2d 488, the widow of a longshoreman employed by a shipowner sued his employer upon death of the longshoreman caused by inhalation of noxious gases

while working on one of defendant's ships. No issue of liability of the vessel *in rem*, absent responsibility of the owner was involved.

From the foregoing it is clear that the conflict whose importance the Petitioner unduly exaggerates, is only between the Second Circuit in *Grillea*, supra, and the First Circuit in *Vlasi* v. *Balboa Shipping Company*, 163 F.2d 286, and *Ruiz Pichirilo* v. *Majsonet Guzman*, 290 F.2d 812, followed by the Third Circuit in *Reed* v. *The Yaka*, 307 F.2d 203.

If the grounds advanced by each of the conflicting Circuit Courts in support of their respective positions are considered from the point of view of their weight and significance, we have no doubt that reason will side with the First Circuit. This conclusion is strengthened by the fact that in *Cannella* v. *Likes Bros. S. S. Co.*, 174 F.2d 794, the Second Circuit by the same Chief Judge Learned Hand, who wrote the opinion in *Grillea*, made the following statement:

> "In the case at bar the defendant was not in possession of the ship, as owner, when the plaintiff was injured; neither was it an "*owner pro hac vice*" by virtue of its possession under the operating contract. Was there nevertheless a direct personal liability running from it to the plaintiff? Is that a proper corollary of *Seas Shipping Co.* v. *Sieracki*, supra; and, if so, what are the limits of such a liability? In the only two cases where the question has come up, it must be owned that the answer has been "No." (Our own decision in Re New York Dock Co. was rendered before *Seas Shipping Co.* v. *Sieracki*, supra, and for that reason has no bearing upon the question.) The argument in these cases was that, since the "bareboat charterer" is liable, as 'owner *pro hac vice*', the

owner out of possession should not also be held, because, as we understand it, there is no personal relation between him and the longshoreman. *If these decisions had held no more than that the owner-demisor is not liable for any unseaworthiness arising after the charter, we should altogether agree*; but it is clear in the *New York* case, that the courts meant to go further and hold that the owner-demisor was also not liable for unseaworthiness existing at the time of delivery." (Emphasis ours).

In any event, we must respectfully call the attention of this Court to the fact that the instant case is not the proper one to resolve that conflict, because herein here are present the following factors which do not occur in cases arising in the Continental United States:

(a) The powers granted by Congress to the Commonwealth of Puerto Rico over its harbor areas and surrounding waters.

(b) The Puerto Rico Workkmen's Compensation Act which exonerates the insured vessel owner-employer from liability and limits the remedy of the longshoreman employee to the compensation provided under such law.

3. The Decision of the Court of Appeals for the First Circuit is Not in Conflict With Provisions of the Constitution of the United States.

Almost from the very outset, there has been a lack of application to Puerto Rico of Constitutional provisions otherwise uniform in the United States. Thus in *Downes v. Bidwell*, 182 U.S. 244, 277, 287, this Court held in 901 that article 1, section 8 of the Constitution requiring duties to be uniform "throughout the United States" did not pertain to Puerto Rico.

In *Dorr* v. *United States*, 195 U.S. 138, 149 (1904) it was held ". . . that the Constitution does not without legislation, and of its own force, carry such right (trial by jury) to territory (Philippine Islands) . . .", not made a part of or incorporated into the United States.

Twenty-one years after *Downes* v. *Bidwell*, supra, this Court said in *Balzac* v. *People of Puerto Rico*, 258 U.S. 298, 304 (1922) that it was "clearly settled" that Constitutional requirements appearing in article 3 of the Constitution and in the 6th and 7th Amendments as to jury trials, did not apply to territory not incorporated into the Union and that Puerto Rico was not so incorporated (p. 305). This Court also went on to answer, forty-eight years ago, petitioner's current argument that because citizens of Puerto Rico are citizens of the United States, their rights must be in every respect identical (p. 307-309).

Given this background, the decision of the Circuit Court of Appeals in *Lastra et al. v. New York and Porto Rico S. S. Co.*, 2 F.2d 812 (1924) follows in logical sequence. Noting (p. 813) that the Constitution does not apply to Puerto Rico *ex proprio vigore*, the Court found that the admiralty provision of the Constitution (art. 3 § 2) did not therefore extend to Puerto Rico unless Congress had put it there by legislation (p. 813-814).

The subsequent decision in 1956 of *Guerrido* v. *Alcoa Steamship Company, Inc.*, 234 F.2d 349 (1st Circuit) adhered to this view, stating (p. 352):

> "Since Puerto Rico is neither a state of the Union nor a territory which has been incorporated into the Union preliminary to statehood, it is true that all the provisions of the federal Constitution are not necessary in force within its borders."

Petitioner misunderstands the importance and effect

of 48 U.S.C. 737. The purpose thereof is to make sure that *all* citizens of the United States be treated alike *in Puerto Rico*, since the Constitutional protection as to privileges and immunites (art. IV, § 2, cl. 1) refers only to citizens of states. In other words, it prevents that a non-resident citizen be treated in Puerto Rico differently than a citizen residing in Puerto Rico.

In approving a Constitution for Puerto Rico, Congress, in House Report 2275 of June 19, 1950 (1950 U.S. Code Congressional Service, 81st Congress, Second Session, p. 2681) distinguished between the then incorporated territories of Alaska and Hawaii, observing that the Constitution and laws of the United States were extended to them (p. 2683) but "The Constitution has never been extended to Puerto Rico" (p. 2684).

In 1960 in *Fonseca* v. *Prann*, 282 F.2d 153 (1960) the Court of Appeals for the First Circuit faced squarely up to whether or not uniformity of the maritime law was required in Puerto Rico. Reviewing *Lastra and Guerrido*, supra, the Court found (p. 156) that it was not aware of any Constitutional principle which prevented Congress from giving Puerto Rico jurisdiction over its own waters, fully cognizant (p. 157) that its holding "*creates an area of lack of uniformity in the maritime law*" and going on to observe that "*absolute uniformity in things maritime is not a constitutional requirement nor is it even essential to the proper harmony of the maritime law in its interstate and international relations.*" (Emphasis ours)

With the issue of uniformity specifically posed by the Court below, a petition for writ of certiorari was filed in *Fonseca*, urging the same arguments as to uniformity, Constitutional guarantees and conflicts with this Court's decisions, and this Court declined to intervene, 365 U.S. 860 (1960), on this same issue.

Again in 1967 the identical questions of violation of

alleged constitutional rights and lack of uniformity of the admiralty law in the case of longshoremen working in Puerto Rican waters were presented and determined by the Court of Appeals for the First Circuit in *Alcoa Steamship Company* v. *Antero Perez Rodriguez*, 376 F.2d 35, adhering to its former decisions. Petition for a writ of certiorari was filed on behalf of the longshoreman by the same counsel for Petitioner herein, based on the very same grounds and arguments herein repeated, and this Court again denied the writ (389, U.S. 219).

The Petitioner cites the case of *Alcoa S. S. Co.* v. *Velez*, 376 F.2d 521, as representing an occasion in which the Court of Appeals for the First Circuit recognized the requirement of uniformity in the applicaton of the maritime law in Puerto Rico. However, Petitioner fails to state that such recognition was made on the basis of a situation altogether different from that existing in the instant case and others of the same nature formerly decided by the First Circuit. In *Alcoa* v. *Velez*, supra, the manager of the Puerto Rico State Fund attempted to apply the local Workmen's Accident Compensation Act in respect to seamen who as crew-members came to Puerto Rico incidentally with the coming of the vessels on which they regularly worked to load or unload in Puerto Rican ports. In other words, the seamen involved were of the traditional kind and not local longshoremen, and the decision was reached on the basis of a congeries of factors, including ownership outside Puerto Rico, the over-all non-residency and employment of the seamen involved, the temporary nature of the seaman's employment in Puerto Rico, the characteristic concept of maritime law following the flag and the disruptive effect on both the employer and employees of having duplicate and competing systems of recovery for injuries dependent only on locale.

In such circumstances, *Alcoa* v. *Velez* might be consid-

ered as an exception, but never as a departure by the First Circuit from its consistent line of decisions holding that uniformity of the maritime law not required in Puerto Rico.

4. In the Absence of a Constitutional Mandate for Uniformity in Puerto Rico, Congress, Acting Under its Constitutional Power to Legislate for National Territories, Could Have Extended the Admiralty Provision of the Constitution to Puerto Rico, But Has Instead Enabled Puerto Rico to Enact its Own Legislation for Local Maritime Workers.

There is no question that under its power to legislate for territories (art. IV, §3, cl. 2 of the Constitution), Congress could have made the statutory and general maritime law of the United States fully applicable to Puerto Rico. This power has been recognized in all the leading Court of Appeals decisions on the subject. *Lastra*, p. 813-814, *Guerrido*, p. 355, *Fonseca*, p. 155 and *Waterman* v. *Rodriguez*, p. 179, but as *Lastra* points out (p. 813) "We find no such legislation but the reverse".

This Court has also acknowledged the broad powers given by Congress to Puerto Rico, commenting in *People of Puerto Rico* v. *Shell Company, Ltd.*, 302 U.S. 253, 261-262 (1937) that the aim of the Foraker Act, (April 12, 1900, Chapter 191, 31 Stat. 77) and the Organic Act, (March 2, 1917, Chapter 145, 39 Stat. at L. 951.) was to give "full power of local self-determination" to Puerto Rico. Referring also (p. 263) to "the sweeping character of the congressional grant of power contained in the Foraker Act and the Organic Act of 1917"; this Court noted the "general purpose of Congress to confer power upon the government of Puerto Rict to legislate in respect of all local matters is made manifest."

Succeeding enactments have effectively demonstrated how the autonomy of Puerto Rico has been expanded by Congress, in what this Court has termed "the unique historic relationship between the Congress and the Commonwealth of Puerto Rico, . . ." *Katzenbach* v. *Morgan*, 384 U.S. 641, 658 (1966).

The progression can be visualized when it is noted that under the Foraker Act of 1900, 31 Stat. 77, Puerto Ricans were able to elect popularly only the lower house of the territorial legislature and the Resident Commissioner. Under the Organic Act of 1917, 39 Stat. 951, the upper house was brought under the elective procedure and the appointed Governor able to select four of six cabinet members. In 1947, 61 Stat. 770, the Governor of Puerto Rico was permitted to be elected popularly rather than appointed by the President of the United States, and able to appoint all his cabinet members. In 1950, Puerto Ricans were permitted to write their own constitution (48 U.S.C. 731b), which they did after a referendum approving a Constitution, a Constitutional Convention, a referendum approving the Constitution as framed, Congressional and Presidential approval and a proclamation by the Governor of Puerto Rico on July 25, 1952. This Constitution afforded Puerto Rico the largest measure of independence yet accorded it by Congress. See House Report 1832, April 30, 1952 (1952 U.S. Code Cong. Service, 82nd Congress, Second Session pp. 1892-1902), containing also the message of President Truman.

Illustrative of the official attitude of the United States toward Puerto Rico, was a communication by the State Department to the United Nations, characterizing the new status of Puerto Rico as no longer that of "non-self governing nation", Bulletin of the Department of State, Vol. 28, No. 721, April 20, 1953, p. 584, et seq.

The various House Reports reflect this trend.

House Report No. 455, May 26, 1947, (1947 U.S. Code, Cong. Service, 80th Congress, First Session, p. 1587-1589) seeking to amend the Organic Act to provide for a popular election of the Governor of Puerto Rico, pointed out that the existing Organic Act of 1917 gave the Puerto Rican legislature authority extending "to all matters of a legislative character not locally inapplicabe." The Congressional Report went on to state that the people of Puerto Rico had demonstrated a "high degree of political consciousness by the extensive use of the franchise," and that 82.2% of electorate went to the polls in 1944. The report also noted the policy of the United States to encourage the "self-governing ability" of the people of Puerto Rico since 1900.

In 1950, House Report 2275, repeating in substance Senate Report S. 3336 (1950 U.S. Code Cong. Service, 81st Congress, Second Session, p. 2681) approved the adoption of their own constitution by the people of Puerto Rico, noting (p. 2682) that this would

> "further implement the self-government principle established by the Congress as the cornerstone and fundamental policy governing the relationship of the United States toward territories over which it has jurisdiction."

The Report commented further (p. 2682) that the people of Puerto Rico were overwhelmingly in favor of having their own constitution, and further that this legislation "constitutes a reflection of the very strong sentiment which exist in Puerto Rico for a greater measure of local autonomy which this bill represents."

House Report, No. 1832, April 30, 1952 (1952 U.S. Code Congressional Service, 82nd Congress, Second Session, p. 1892) commented favorably on the Constitution

for Puerto Rico. This was said to constitute (p. 1892) * * * the latest of a series of enactments through which the Federal Government has provided ever increasing self-government in Puerto Rico." The Constitution, it was said (p. 1899) "represents the will of the people of Puerto Rico. Upon its approval the people of Puerto Rico assume full authority and responsibility of local self-government."

President Truman in his message of April 22, 1952, recommending Congressional approval of the Constitution, stated (p. 1902):

> "With its approval, full authority and responsibility for local self-government, will be vested in the people of Puerto Rico. The Commonwealth of Puerto Rico will be a government which is truly by the consent of the governed."

On the very issue of the Puerto Rico Compensation Act, the decisions of the Court of Appeals for the First Circuit (as previously mentioned) specifically acknowledge the powers of Congress with *Fonseca*, saying (282 F.2d 153, 157):

> "Of course, if Congress sees fit it may supplant the local legislation as it applies to local navigable waters by making the Jones Act and the general maritime law of unseaworthiness specifically applicable in Puerto Rican waters, but it is not our function to do so."

In view of all the foregoing, the failure of Congress to act in this area may be deemed to be advised rather than inadvertent. Indeed, House Report No. 455, May 26, 1947, (1947 U.S. Code Cong. Service, 80th Congress, First Session, p. 1587) pointedly observes that for the thirty years since the Organic Act of 1917 "Congress has never found

it necessary to exercise its prerogative of annulling any law enacted by the Puerto Rican legislature".

It must be presumed therefore that when Congress enacted the Organic Act of 1917, and particularly Sections 7, 8 and 37 thereof (continued as 48 U.S.C. 747, 749, 821 in the Puerto Rican Federal Relations Act), Congress gave the Puerto Rican legislature, as was said in *Guerrido*, 234 F.2d 349 "general legislative power concerning Puerto Rican waters." (p. 354). This interpretation has now survived for over fifty years in a climate of ever widening autonomy for Puerto Rico.

There being no constitutional requirement for uniformity (No. 3) and with Congress having refrained from intervention (No. 4), petitioner affords this Court no reason why or how it should do so.

5. There Being No Constitutional or Congressional Mandate for Uniformity, There is to Be Considered the Construction of the Local Compensation Act of Puerto Rico, an Area Wherein This Court Traditionally Defers to the Local Courts.

There being no issue requiring constitutional or congressional interpretation, the only remaining question is as to construction of the exclusiveness of remedy provision in the local act, a task reserved for the local courts. While this Court has freely construed the Longshoremen and Harbor Workers Compensation Act, it has traditionally deferred to the decisions of the Supreme Court of Puerto Rico in interpreting local Puerto Rican legislation. Indeed, this Court has, in at least one context, agreed with the local interpretation of the Puerto Rican Act as to exclusiveness. See *Guzman* v. *Pichirilo*, 369 U.S. 698, 699 (footnote 1) (1962).

Thus, in discussing the very act in question, the Puerto

Rico Workmen's Accident Compensation Act, this Court said in *Bonet* v. *Texas Co.*, 308 U.S. 463, 471 (1940), citing the earlier decision of *Bonet* v. *Yabucoa Sugar Co.*, 306 U.S. 505, 510:

> "Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island."

Pointing out that lip-service to this admonition was not enough, this Court went on to say (p. 471):

> "To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal choose what might seem, on appeal, to be the less reasonable of two possible interpretations."

This is so even if the local rule may be one, as was said in *DeCastro* v. *Board of Commissioners of San Juan*, 322 U.S. 451, 458-459 (1944), which is "out of harmony with our traditional system of law and statutory construction." (and further p. 455):

> "Hence we have emphasized as a cardinal principle of review in such cases that the mere fact that our system of law and statutory construction would call for the application of one rule to a given set of facts, does not preclude the adoption of a different one by the insular courts."

The rule of the *Bonet* and *DeCastro* cases was reaffirmed *In Re Sawyer*, 360 U.S. 622, 640 (1959) when this Court said:

> "Of course this Court and the Courts of Appeal must give the Territorial Courts freedom in developing principles of local law and in interpreting local legislation."

(a) The Supreme Court of Puerto Rico has consistently and without exception deemed its Workmen's Accident Compensation Act to be the exclusive remedy of all employees (including local seamen) against their employers who comply with the Act.

In support of the foregoing, see *United Porto Rican Sugar Co.* v. *District Court*, 44 P.R.R. 904, 906-907 (1933) (local seaman) and *Onna* v. *The Texas Co.*, 64 P.R.R. 497, 502 (1945). In *DeJesus* v. *Osorio, et. al.*, 65 P.R.R. 601 (1946), the Court not only adhered to the exclusive provisions of the Puerto Rican Compensation Act, but went on to define the purposes of the act, and construe it as drawn (p. 604):

> "We cannot agree with the appellant. The purposes sought by workmen's compensation acts, such as ours, comprise not only the enlargement of the rights of the workman, but also the limitation of the employer's liability. While on the one hand the employer, or his insurer, is compelled to pay compensation without reference to any fault or negligence on his part, and the defense of a contributory negligence or negligence of a fellow servant and other defenses are eliminated, on the other hand, the amount of the compensation is limited and in case of death, compensation is allowed only to those who were dependent for support on the workman. It is therefore perfectly consistent with those

purposes to eliminate, as our statute expressly did, all remedies against the employer based on a labor accident, except those expressly provided by the statute. If the result is, as in the case at bar, that certain persons are deprived of the right to compensation, in case of death, which they had before the approval of the act, we can not say that result was not within the intention of the lawmaker, particularly in view of the fact that persons not dependent on the deceased workman are the only ones deprived of such right."

On December 18, 1963, some seven months after the decision of this Court in *Reed* v. *S/S Yaka*, the Supreme Court of Puerto Rico decided *Inter Island Shipping Corporation* v. *Industrial Commission of Puerto Rico*, 89 P.R.R. 635, and in a comprehensive opinion, traced the history and legislative background of the local compensation act, reviewed the *Lastra*, *Guerrido*, *Fonseca* and *Waterman* v. *Rodriguez* decisions, and found that the Puerto Rican Workmen's Compensation Act made the general maritime law of the United States "locally inapplicable" and under the circumstances was therefore the exclusive remedy of the injured seaman.

More recent decisions of the Supreme Court of Puerto Rico underscore its philosophy of approving the existing unified system of compulsory compensation administered under the aegis of the government for the benefit of the employee to the complete exclusion of any other redress against his employer who complies with the Act. This was clearly expressed in *Cortijo Walker* v. *Puerto Rico Water Resources Authority*, 91 P.R.R. 557, and also *Marcano Torres* v. *Puerto Rico Water Resources Authority*, 91 P.R.R. 635.

While agreeing that it was "manifestly undesirable" that a local statute be first construed in a Federal Court of

Appeals in *Camunas* v. *New York and Porto Rico Steamship Co.*, 260 F. 40, 48, 55 (1919), nevertheless went on to construe the original compensation act and find that there was not even "reasonable doubt that the Puerto Rican Legislature intended to impose, upon employers and employees alike, the compensation theory in substitution for the negligence theory."

It is evident that Puerto Rican policy favors the certainty of workmen's compensation over the hazards of damage actions as the most salutory way of benefiting workmen injured in the course of their employment and, as this Court observed in *Norton* v. *Warner Company*, 321 U.S. 565, 571 (1944) "Whether they (damage actions) are more desirable than system of compensation is not for us to determine." (parenthetical reference supplied).

But apart from the power of the Puerto Rican legislature to pass, and that of the Puerto Rican Supreme Court to construe its own laws, where the same act applies to all employees it would be unfair and unjust to permit a certain form of employee (longshoreman or harbor worker) to both sue his employer for damages and collect compensation, while all others have only their compensation remedy.

Following *Camunas et al* v. *Porto Rico Ry. Light and Power Co.*, 272 F. 924 (CCA 1st 1921), railroad employees were covered by the Puerto Rico Compensation Act and not by the Federal Employers Liability Act. They may not, therefore, sue their employer. As the Court said (p. 929), "We can conceive of no reason why Congress should desire to put employees of Puerto Rican railroads in a class by themselves so far as remedy for accidents is concerned." This decision has remained untouched by Congress for forty-nine years. It also furnishes a separate and distinct impetus for not applying the Jones Act, 46 USC 688, which incorporates the Federal Employers Liability Act, in Puerto Rico.

It has been held in *United Porto Rican Sugar Co. v. District Court*, 44 P.R.R. 904, 906-907 (1933); *Fonseca v. Praun*, 282 F. 2d 153, cert. den. 365 U.S. 860; *Inter Island Shipping Corporation v. Industrial Commission of Puerto Rico*, 89 P.R.R. 635 and finally *Hoia Steamship Company, et al. v. Ulpiano Velez*, 376 F. 2d 521 (1st Cir., 1967), that local seamen are covered by the compensation act and not by the Jones Act or the general maritime law.

Thus in Puerto Rico, the longshoreman who asserts certain derivative rights because of his identity as a seaman, would, following petitioner's argument, have greater rights than local seamen. This would not be true under the Longshoremen's Act, 33 U.S.C. 902 (3) where seamen in the traditional sense are excluded from coverage. Their ancient remedies are preserved to them as it was apparently their wish that this would be so. See *Norton v. Warner Corp.*, 321 U.S. 565, 570 (1944). Consequently in the *Reed* and *Jackson* cases, this Court was only keeping longshoremen employees of shipowners abreast with Jones Act seamen employees, whereas under the Puerto Rican Act, as Petitioner wants it to be construed, local longshoremen would have rights superior to those of local seamen.

With the local seaman employee in Puerto Rico, not having any "traditional" seamen's rights by reason of the exclusiveness of the compensation act, the longshoreman employee is not really being deprived of anything when he is hired directly by the shipowner or the owner *pro hac vice*, as the seaman is.

While Petitioner prefers to identify himself with mainland longshoremen, it would seem more fitting that he be asked why he should be entitled to more than all sugar workers and factory employees in Puerto Rico, all railroad employees in Puerto Rico, and all local Jones Act seamen employees in Puerto Rico?

We believe that no further argument should be necessary

to show that the construction of the Puerto Rico Workmen's Accident Compensation Act by the Supreme Court of Puerto Rico and the applicability of such construction to the local longshoremen should not be disturbed. In fact, it appears clearly to us that all the questions raised by the Petitioner in that connection were definitely decided by this Court adversely to Petitioner's contentions when Certiorari was denied in *Fonseca* v. *Prann*, 365 U.S. 860, (1960), and in *Antero Perez Rodriguez* v. *Alcoa S. S. Co.*, 389 U.S. 219 (1967).

6. The Tort Provisions of the Civil Code of Puerto Rico Create No Liability Unless There Is Fault or Negligence of the Party Sought to Be Made Responsible, and No Remedy *In Rem* Exists in Connection with the Enforcement of the Liability that May Arise Under Said Provisions.

In a futile effort to introduce into this case what the Petitioner imagines to be a new factor which will distinguish it from *Fonseca* v. *Prann* (Cert. denied 365 U.S. 860) and *Rodriguez* v. *Alcoa*; (Cert. denied 389 U.S. 219), the Petitioner alleges that Section 1802 of the Civil Code of Puerto Rico, 31 L.P.R.A. Sec. 5141, provides a remedy against the "demisor and the vessel" for the unseaworthiness even though the demisor had parted with the possession and control of the vessel and had no connection with the accident causing the damages involved.

In the case of *Compania Trasatlantica Espanola* v. *Melendez Torres*, 358 F. 2d 209, cited by Petitioner, a longshoreman's intestate claimed damages on account of the laborer's death caused by an accident in which unseaworthiness was held to exist and liability therefore was attributed to the shipowner who was in possession and control of the vessel. The longshoreman was working for the stevo-

doring contractor who was insured under the Puerto Rico Workmen's Compensation Act. The owner filed a claim for indemnity against the stevedore. It was decided that the laborer's intestate could collect from the vessel-owner for unseaworthiness under the local Civil Code tort provisions, and that the owner in turn was entitled to indemnity from the stevedore. Obviously, that case can be readily distinguished from the instant one in which the owner demisor was not in possession or control of the vessel and thus had no connection whatever with the accident; while on the other hand, the charterer demisee was in entire possession and complete control of the vessel and was the employer of the Petitioner duly covered under the local State Fund Insurance Law and immune against any other remedy by the Petitioner.

We believe that the Court of Appeals was entirely correct in rejecting Petitioner's contention of the meaning of the "saving to suitors' clause, but even assuming for the mere sake of argument that the provisions of the Civil Code of Puerto Rico invoked by the Petitioner might be supplemental to the admiralty law, in a case like the one herein, where no death claim is involved, such provisions would be of no avail to him because, in order to be made responsible thereunder, the party against whom liability is sought must be shown to have caused the damages claimed by his fault or negligence. If, as appears from the undisputed facts herein, the damages claimed arose from an accident which occurred during the unloading operations of the vessel being conducted by the charterer and owner *pro hac vice* for his own account and benefit, while the ship was in his full possession and complete control, how can the owner be charged with fault or negligence in connection with that occurrence? Evidently there is no basis whatever to Petitioner's theory.

In support of his new and novel contention the Petitioner cites two decisions of the Supreme Court of Puerto Rico

which are readily distinguishable and clearly inapplicable to the factual and legal situation herein, as we shall forthwith demonstrate.

In the case of *Barrientos v. Government of the Capital*, (Petition, Appendix J, p. 47), we find that it involved claims by parties who had sustained damages due to the negligence of a Contractor who was performing certain construction work for the said Government. The work involved was held to be inherently dangerous. The Puerto Rico Supreme Court decided that under the special circumstances in the case, the Government could not be relieved from liability by invoking the "independent contractor" defense. In other words, the Government had a job to be done and it engaged a contractor to do it, but because it was inherently dangerous the Government could not avoid liability arising therefrom by just turning it over to an independent contractor.

Frankly, we do not see how that decision can be applied to the situation existing in the instant case, where the shipowner had parted completely with the possession, control and management of the steamer, and particularly, where the demise charterer (owner *pro hac vice*) was not doing any work for the vessel-owner, but at the time of the alleged accident was in the process of unloading the cargo transported by him, for his own account and benefit, on the demised vessel. According to paragraph Ninth of the Amended Complaint the alleged injury to Appellant was caused "when he was precipitated from the deck of a launch being carried as deck cargo onto the main deck of the vessel" (Appendix F to Petition, page 34), so that the shipowner had nothing whatsoever to do with the occurrence and no fault or negligence could be charged against him in connection therewith.

The other case of the Supreme Court of Puerto Rico mentioned by Petitioner in support of his new point is *Goenaga v. West Indies Trading Corp.*, 88 P.R.R. 847. The Petitioner

did not call this case to the attention of the Court of Appeals and it seems to us that he has now brought it in because the Court of Appeals in its opinion, while commenting on *Barrientos v. Government of the Capital*, stated that "a shipowner who parts with his vessel under a demise charter is more nearly analogous to a lessor than to a principal contractor." (Petition, Appendix D, p. 28).

The situation involved in *Goenaga v. West Indies Trading Corp.* may be briefly outlined as follows: Goenaga was a lessee of a portion of a building, which portion was devoted to a garment shop; another part of the building was leased to West Indies Trading and used by it in the inherently dangerous fumigation of tobacco with carbon bisulphide. On an occassion an incipient fire broke out in the premises occupied by West Indies, and Goenaga notified the lessor of the occurrence and of the danger involved in the operation being carried on by the co-lessee. A few months later there occurred in West Indies premises an explosion followed by a fire which burned down the entire building. The Supreme Court of Puerto Rico decided that both West Indies and the lessor were responsible for the damages suffered by Goenaga as a consequence of the fire.

Here again we fail to see how that decision may have any applicability whatever to the situation of fact and law existing in the instant case.

Finally, there is to be considered Petitioner's apparent contention that the Puerto Rico tort provisions also afford him an *in rem* remedy against the vessel. On page 14 Petitioner states that the local tort law "would subject the demisor *and the vessel* to the same liability that is imposed by the general maritime law". (Emphasis ours).

We have already shown that the demisor can not be held liable under the local tort law unless it is established that the accident from which the damages arose was due to his fault or negligence; and have likewise shown that in the

instant case such fault or negligence are absolutely absent because of the undisputed circumstances under which the accident occurred. Now, that being clearly so, how can the *vessel* be liable *in rem* for the consequences of the accident? We have not found any authorities or decisions holding that there is an *in rem* remedy under the general tort law, and as to Puerto Rican law and jurisprudence, we can say that an *in rem* liability for a claim in tort simply does not exist. For this reason the Petitioner has been unable to cite any authority or decision in support of his bare statement concerning the vessel's *in rem* liability under the tort provisions of the Puerto Rico Civil Code.

In view of the foregoing, it is obvious that the Petitioner has completely failed to bring into this case any new element which may move this Court to change its position as evidenced by denial of Certiorari in *Fonseca* v. *Praun*, 365 U.S. 860, and *Perez-Rodriguez* v. *Hecq*, 389 U.S. 219.

Conclusion

For All The Reasons Hereinabove Set Forth It Is Respectfully Submitted That The Petition For A Writ Certiorari To The United States Court Of Appeals For The First Circuit Should Be Denied.

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